

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7378

Petition of Vermont Marble Power Division of Omya,     )  
Inc. for a declaratory ruling that a Certificate of Public     )  
Good is not required for the replacement of the Unit #2     )  
turbine, and related electrical improvements, at the     )  
Beldens Hydroelectric Station in New Haven, Vermont     )

Order entered: 2/20/2008

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**DECLARATORY RULING**

**I. INTRODUCTION**

On November 19, 2007, Vermont Marble Power Division of Omya, Inc. ("VMPD") filed a petition with Public Service Board ("Board"), pursuant to 30 V.S.A. § 248(j), for a Certificate of Public Good ("CPG") or, in the alternative, a declaration that a CPG is not required, for the replacement of a turbine and related electrical improvements at VMPD's Beldens Hydroelectric Station in New Haven, Vermont. VMPD's petition stated that "the replacement appears to constitute 'the replacement of existing facilities with equivalent facilities in the usual course of business' and therefore be exempt from the requirement to obtain a CPG," pursuant to 30 V.S.A. § 248(a)(2).

On December 4, 2007, the Clerk of the Board sent a letter to VMPD informing it that the November 19 petition "does not meet the requirements of Board Rule 5.400 for Section 248 petitions or the requirements of Board Rule 2.403 for a request for a declaratory ruling." The Clerk's letter described the additional information that VMPD should file to satisfy the rules' requirements. The letter also recommended that VMPD discuss with the Department of Public Service whether a CPG is required for the proposed work, with respect to whether the work might constitute "replacement of existing facilities with equivalent facilities in the usual course of business" and whether Board jurisdiction might be preempted by federal law.

On December 24, 2007, VMPD filed a petition with the Board seeking a declaratory ruling regarding whether a Section 248 CPG is required for the proposed work at the Beldens

Station.<sup>1</sup> With its petition VMPD included a supporting memorandum of law, which was the necessary information that was missing from VMPD's November 19 declaratory ruling request. VMPD's December 24 petition also relies on the prefiled testimony of Todd Allard that it had included with its November 16 petition. VMPD asks that the Board, in reviewing the December 24 declaratory ruling petition, consider the information set forth in Mr. Allard's prefiled testimony.<sup>2</sup>

On January 18, 2008, the Clerk of the Board issued a memorandum setting a deadline of January 28, 2008, for any comments on the declaratory ruling petition, including any request for an evidentiary hearing.

On January 28, 2008, the Department of Public Service ("Department") filed a letter stating that it did not request an evidentiary hearing, and that the Board should grant VMPD's request for a declaratory ruling.

The Board has reviewed VMPD's December 24 petition, VMPD's supporting memorandum of law, Mr. Allard's prefiled testimony, and the Department's response to the December 24 petition, and concludes that it should issue the requested declaratory ruling – that a CPG is not required – without an evidentiary hearing.

## **II. FINDINGS**

1. VMPD is a Vermont retail electric utility. It owns and operates four hydroelectric generating stations on Otter Creek, including the Beldens Station. Pet. at 1.

2. The Beldens Station consists of three units. Unit number 1 and unit number 2 each have a capacity of approximately 800 kW, and were initially installed around 1913 when the station was constructed. The third unit was installed in 1987 when the station was upgraded under a license issued by the Federal Energy Regulatory Commission. Allard pf. at 4.

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1. VMPD's declaratory ruling request focuses on whether the proposed project constitutes the replacement of existing facilities with equivalent facilities in the usual course of business. VMPD notes in its cover letter that it has chosen not to raise the issue of federal preemption at this time.

2. Because no objections to this request were received, and because Mr. Allard's prefiled testimony contains information relevant to the declaratory ruling request, the Board will consider Mr. Allard's testimony.

3. The number 2 turbine recently failed. The work that VMPD will be conducting at the Beldens Station is replacement of the number 2 turbine, along with the installation of related, modern switchgear and electrical components. The existing generator will be inspected, cleaned, and re-installed in conjunction with the replacement turbine. Pet. at 1; Allard pf. at 4.

4. The new turbine at Beldens Station will be a double-runner Francis turbine, which is the same type as the existing turbine. Compared to the existing turbine, the new turbine will have a slightly increased output (1273 hp compared to approximately 1200 hp) and a slightly decreased maximum rate of flow (317 cfs compared to 350 cfs). Pet. at 2; Allard pf. at 6, 8.

5. Turbine replacement will include the new turbine, wicket gates and operating mechanism, headcover and packing box, turbine shaft and intermediate shaft, a new thrust bearing and upstream bearing, and a new hydraulic pumping and control unit. Pet. at 2; Allard pf. at 6.

6. The new turbine components and operation will be essentially the same as existing, except that the new turbine will have the ability to operate the two sets of wicket gates independently for greater operating efficiencies, and some of the components (such as the bearing) will be of a current technology. The new turbine will utilize the existing turbine pressure case and penstock. There will be no changes to the outward appearance of the Beldens Station house. Pet. at 2; Allard pf. at 14.

7. The replacement of electrical components will be somewhat more extensive. In addition to replacing electrical components for turbine number 2, VMPD will be replacing many of the electrical components for unit number 1 as well, in order for those components to be compatible. Pet. at 2; Allard pf. at 7.

8. The work will also include a new station service transformer and new static excitation system for turbine number 2. The station service transformer relates only to the on-site electricity consumption by VMPD for operation of the Beldens Station. Pet. at 2; Allard pf. at 7.

9. The proposed work at the Beldens Station is expected to cost approximately \$1,150,000. Allard pf. at 8.

10. The proposed work at the Beldens Station should not result in a significant impact under any of the substantive criteria specified in 30 V.S.A. § 248. Allard pf. at 8–17.

### **III. DISCUSSION AND CONCLUSION**

Construction of an electric generation facility in Vermont requires a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248, "[e]xcept for the replacement of existing facilities with equivalent facilities in the usual course of business . . . ."<sup>3</sup> Both VMPD and the Department contend that VMPD's proposed work at the Beldens Station constitutes the replacement of existing facilities with equivalent facilities in the usual course of business and, thus, does not require a CPG.

VMPD points to Board precedent establishing a three-part test for determining whether modifications to a transmission line constitute replacement of existing facilities with equivalent ones in the usual course of business. As the Board has stated in a previous Order, that test involves the following steps:

1. An assessment must be made of whether the changes proposed are within the existing right-of-way. If the facility or change cannot be accommodated within the existing right-of-way, a certificate of public good will most likely be required.
2. The proposed changes to the line should also not significantly alter the capacity of the existing line. Again, if the basic capabilities or capacities of the line change, the presumption that the new or altered line is an equivalent line would be lost and Board approval would be required.
3. Finally, if the above two criteria are satisfied, an assessment should be made as to whether the changes will actually result in the installation of "equivalent" facilities in other respects that are relevant to the criteria set out in 30 V.S.A. § 248. To make this determination, the proposal must be reviewed to determine if there will be any **significant** impacts under any of the criteria of 30 V.S.A. § 248. If such an impact is evident, again the presumption that the line is the replacement of an existing facility with an "equivalent" facility would be lost and a petition for a certificate of public good must be filed.<sup>4</sup>

VMPD contends that the principles underlying this three-part test support its position that the proposed Beldens Station work should not require a CPG. According to VMPD, the Beldens Station project will be accommodated within the existing structure, will not significantly change

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3. 30 V.S.A. § 248(a)(2).

4. Docket No. 5514, Order of 7/29/91 at 10 (emphasis in original); *see also* Docket Nos. 5841/5859, Order of 6/16/97 at 142; Docket No. 6761, Order of 11/14/02 at 3; Docket No. 7100-A, Order of 6/5/06 at 5.

the capacity of the hydroelectric facility, and will not result in any significant impacts under the Section 248 criteria. VMPD also distinguishes its proposed work at the Beldens Station from instances in which the Board concluded that new facilities resulting in a doubling of capacity were not "equivalent" to previous equipment.<sup>5</sup>

In its January 28 filing, the Department states:

It also appears that VMPD, facing the demise of the number 2 turbine, has sought to replace it with matching, though obviously more modern, equipment. The only changed impact expected from the new turbine is a modest 6% increase in output, and a slightly decreased rate of maximum flow. DPS engineering staff have concluded that the small increase in output is not expected to have any adverse system impacts. Replacement of the existing electrical equipment with its modern equivalent should help to maintain reliability and avoid potential failures in the future.<sup>6</sup>

The Department recommends that the Board grant VMPD's declaratory ruling request, limited to the facts presented.<sup>7</sup>

We conclude that VMPD's proposed work at its Beldens Station constitutes the replacement of existing facilities with equivalent ones in the usual course of business. The replacement of failed equipment that is almost a century old with modern counterparts, and the concomitant replacement of related equipment, with only a minimal increase in capacity and no anticipated significant impacts under the Section 248 criteria, fall squarely within the statutory exemption. We also adopt the Department's recommendation and limit today's ruling to the specific facts presented.

This ruling addresses only the Board's jurisdiction over the project. VMPD is responsible for determining whether any other regulatory approvals must be obtained.

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5. Docket No. 6544, Order of 2/20/02; Docket No. 7100-A, Order of 6/5/06.

6. Department letter of January 28, 2008, at 1.

7. The Department states that a bright-line test for "equivalent" facilities would be desirable, but that the Department is unable to propose one at this time due to the "diversity of circumstances and equipment" that could be involved in other cases.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Vermont Marble Power Division of Omya, Inc.'s ("VMPD") replacement of the turbine in Unit number 2 and associated equipment at its Beldens Hydroelectric Station in New Haven, Vermont, as described by VMPD in its petitions filed November 19 and December 24, 2007, does not require a certificate of public good under 30 V.S.A. § 248.
2. This ruling is limited to the specific facts presented in this proceeding.

Dated at Montpelier, Vermont, this 20<sup>th</sup> day of February, 2008.

<u>s/James Volz</u>	)	
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<u>s/David C. Coen</u>	)	PUBLIC SERVICE
	)	
	)	
<u>s/John D. Burke</u>	)	BOARD
	)	
	)	OF VERMONT

OFFICE OF THE CLERK

FILED: February 20, 2008

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*